C.S.108

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

W.P. NO. 2327 OF 2004

Petitioner

M.R. Sarthi
S/o Late Shri S.R. Sarthi
Aged about 59 years
Working As Special Secretary, Government of Chhattisgarh, Deptt. Of Tribal Welfare, D.K.S. Bhavan, Raipur (Chhattisgarh)

P.R. No. 8246/04
Presented by Shri Rajkumar Gupta
dated 26-7-04

VERSUS

Respondents

1. Union of India
Through Secretary
Personal and Administrative Reforms,
New Delhi.

2. State of Chhattisgarh
Through the Principal Secretary, Government of Chhattisgarh, Deptt. Of General Administration, D.K.S. Bhavan, Raipur (Chhattisgarh)

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VIJAY HARIT
Central Government Standing Counsel
CHHATTISGARH HIGH COURT

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
(Division Bench)

CORAM : HON'BLE SHRI A.K. PATNAIK, CJ
& HON'BLE SHRI DHIRENDRA MISHRA, J.

WRIT PETITION NO.2327 OF 2004

ORDER FOR CONSIDERATION

Sd/-

JUDGE
25/09/2005

HON'BLE SHRI A.K. PATNAIK, CJ

Sd/-
Chief Justice

POST IT FOR: 06/09/2005

Sd/-
Dhirendra Mishra
Judge

AFR

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DIVISION BENCH: HON'BLE SHRI A.K.PATNAIK, C.J. and HON'BLE SHRI DHIRENDRA MISHRA, J.

Writ Petition No. 2327 of 2004

Petitioner: **M. R. Sarthi**

Vs.

Respondents: **Union of India and Others.**

Shri Manindra Shrivastava, learned Sr. Counsel with Shri Amit Verma, for the petitioner.

Shri Pramod Verma, learned Addl. Advocate General for the respondent No. 2.

ORDER

(Passed on 06/09/2005)

Per **Dhirendra Mishra, J**

The petitioner is an I.A.S. officer who at the relevant time was posted as Additional Collector, Dantewada, District-Bastar, from 22.02.1994 to 28.01.1996. Vide letter dated 27.12.1997 the then Government of Madhya Pradesh issued a Show Cause Notice to the petitioner alleging that he was guilty of gross misconduct and suspicious loyalty which was in violation of rule 3(1) and 3(3)(1) of All India Service (Conduct) Rules, 1968. Allegation against the petitioner was that while acting as an officer of the Government he granted permission to fell 2111 trees in violation of M.P. Protection of (Aboriginal Tribes) (Interest of trees) Act, 1956 (hereinafter referred to as 'Act of 1956' for convenience). The petitioner replied to the said Show Cause Notice vide reply dated 01.01.2004 of Annexure P/7. Thereafter, the petitioner

was served with a charge sheet along with the statements of the charges coupled with list of relevant documents on 24.12.2003 on the basis of which the charges were proposed to be proved including the names of the witnesses proposed to be examined in support of the charges. Charge No. 1 leveled against the petitioner was that he in collusion with some private persons accorded permission for felling trees in violation of section 3 of the Act of 1956. At the same time he is also alleged to have accorded permission for felling prohibited trees in contravention of sections 240 and 241 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'Code of 1959') in order to benefit the private persons.

2. The petitioner preferred an original application No. 61/2004 before the Central Administrative Tribunal (C.A.T.) praying for quashment of charge sheet dated 24.12.2003. However, the Tribunal vide order dated 09.07.2004 disposed of the application with a direction to the respondents to conclude the enquiry against the petitioner within a period of six months form the date of receipt of copy of the said order. However, the prayer of the petitioner for quashing the charge sheet was turned down. The petitioner by the instant petition is challenging the order passed by the Central Administrative Tribunal and praying for setting aside the charge sheet dated 04.12.2003.

3. Case of the petitioner is that charges leveled against him are based on the order passed by the petitioner in the revenue cases detailed in paragraphs No. 5.10 and 5.11 of the petition by which it is alleged that the petitioner while discharging his duties of public servant as Additional Collector, Dantewada, granted permission to the applicants of the aforesaid revenue cases for felling trees, the value of which was exceeding Rs.5,000/- in violation of the provisions of section 3 of the Act of 1956. Charge No.2 against the petitioner is that while according permission to the applicants of the aforesaid

revenue cases the rules contained in sections 240 and 241 of the Code of 1959 have been ignored.

4. The submission of learned counsel for the petitioner is that from perusal of the records of the aforesaid revenue cases referred to in the charge sheet, it is evident that the orders have been passed by the petitioner while exercising quasi judicial functions and the same were challengeable by way of appeal under the Code of 1959 as well as under the Act of 1956 but no appeal has been preferred against the order passed by the petitioner. It is further submitted that the petitioner has been issued with the charge sheet on the basis of the report submitted by the C.B.I. and as such the disciplinary authorities are guided by external factors for initiating disciplinary proceedings against the petitioner for imposition of major penalty which is not permissible under the law. It is also submitted that even if the allegations made against the petitioner are accepted, the same may not be termed as misconduct as the misinterpretation of law cannot be said to be an act of misconduct. According to the counsel for the petitioner there is no allegation in the charge sheet that the orders were passed by the petitioner for extraneous consideration. It is further submitted that the petitioner in reply to the Show Cause Notice had detailed the orders passed by his predecessors in the same manner, but however, they were never served with any Show Cause Notice or charge sheeted which demonstrates that the petitioner has been discriminated as a result of actuation fraught with mala fides. The allegations in the charge sheet are quite vague and baseless as they do not put forth any specific charge which can be attributed to be an act of misconduct. It is further submitted that if the officers performing quasi judicial functions are charge sheeted as in the present case, then the same may affect the independent functioning of such officers and on these grounds the charge sheet of Annexure P/2 issued against the petitioner may be quashed.

5. Answering the pleas raised by the learned counsel for the petitioner, learned Additional Advocate General appearing for the respondent/State submitted that there was sufficient material to proceed against the petitioner and the Central Administrative Tribunal was right in not interfering with the disciplinary proceedings at the very threshold. He submits that the petitioner would have prayed to defend himself in the proceedings which have been initiated against him. It is argued that the orders have been passed by the petitioner in number of revenue cases in violation of the mandatory provisions of the Act of 1956 wherein it is mentioned that no such permission will be granted in a year for sale of timber the value of which exceeds Rs. 5000/- unless the Collector thinks that sale of the timber having the value exceeding such limit is necessary to meet the urgent expenses.

6. From perusal of the revenue cases referred to in paragraph 5.9 of the petition it appears that the applicants of all these revenue cases i.e. (132-A 63 /1993-94, 12-A 63/1992-93, 9-A 63/1994-95, 158-A 63/1994-95, 111-A 63/1994-95, 109-A 63/1994-95, 110-A 63/1994-95, 154-A 63/1994-9, 112-A 63/1989-90 and 3/A-63/89-90) have purchased the land in question from the other tribal owners.

7. The applicant in Revenue Case No. 132-A 63 /1993-94 namely Mahendra Karma alias Gada Karma after purchasing 7.35 acres of land for a consideration of Rs. 22,050/- and 33 trees (24 teak trees, 2 Bija trees and 7 Mahua Trees) for a sum of Rs, 1,31,600/- from its tribal owners through a registered sale deed dated 10-2-1994, applied for permission on 28.4.1994 to cut the trees standing on his land and sell the same. The petitioner after obtaining the report from the Divisional Forest Officer Jagdalpur as also the concerned Sub Divisional Officer (Revenue) accorded permission vide order dated 24.10.94 to cut 27 trees (25 teak trees and 2 Bija trees) and sell the same

to the Forest Department. The applicant was also permitted to use five cubic meters of timber for his personal need.

8. Similarly, the applicant in Revenue Case No. 12-A 63/1992-93 namely Ghasiram purchased 3.78 acres of land from its tribal owners for a sum of Rs. 4000/- through registered sale deed dated 21.3.1988 executed by Paklu, Sudru and Lakhma, and applied for permission to cut 16 teak trees, 01 Aden tree, and sell the same to the forest department. However, the sale deed so executed by the persons named above did not make any mention of the trees standing on the said land. The then Collector called for the report from the concerned DFO as also the SDO (Revenue). However, during the pendency of the said application another sale deed in favour of the applicant of this revenue case was got executed by Paklu, the tribal owner, on 11.10.1994 and by this sale deed 12 teak trees standing on the land sold earlier were again sold for a consideration of Rs. 45,000/-. As per the demarcation report submitted by the Revenue Inspector 23 trees were standing on the said land. The petitioner vide order dated 2.6.1995 granted permission to cut 10 teak trees and sell the same to the forest department.

9. Likewise, the applicant of Revenue Case No. 9-A 63/1994-95 namely Ghasiram submitted an application to lift the two trees lying in his land measuring 3.78 acres which he had purchased from its tribal owners through registered sale deed dated 21.3.1988, as they had fallen due to the storm in the year 1992-93 and requested the concerned DFO to make payment against the same. Taking cognizance of that application DFO South Bastar vide memo dated 16.3.1994 informed the Collector that 2 teak trees have been transported to the Forest Depot, Dantewada and therefore appropriate order may be passed for payment against the said trees to the applicant. On the basis of said information given by the concerned DFO the aforesaid case was registered. During the pendency of the case tribal Paklu had executed another sale deed for the 12 teak trees for a consideration of Rs. 55,000/- in favour of the

applicant. The Collector vide order dated 21.11.1994 permitted the Forest Department to make payment to the applicant namely Ghasiram.

10. In Revenue Case No. 158-A 63/1994-95 applicant Bhushan Singh purchased 3.77 acres of land from its tribal owner Lakhan Singh Gond for a consideration of Rs. 4000/- through registered sale deed dated 27.07.1988, 1.33 acres of land from tribal owner Hando and Hirma for a consideration of Rs. 2000/- through registered sale deed dated 4.7.1988, 5.76 acres of land from tribal owners Manglu, Chamru and Lakhma through registered sale deed dated 26.10.1988 for a consideration of Rs. 10,000/-, 2.31 acres of land from Bodo widow of Pandu Gond for a consideration of Rs. 4000/- through registered sale deed dated 26.10.1988. Thereafter, he applied for permission to cut the trees standing on his land and sell the same to the Forest Department. The then Collector vide order dated 21.1.1992 rejected the application of the applicant on the ground that in the sale deeds the sale of the timber trees had not been mentioned. The appeal preferred by the applicant was also dismissed by the Commissioner on 30.11.1992. However, the Board of Revenue vide order dated 26.8.1994 set aside the orders passed by the Collector and Commissioner. The applicant thereafter submitted an application on 5.6.1995 before the petitioner. During the pendency of the said application the tribal owners of the trees namely Madka, Lakhma, Chappe, deceased Magdu, Kama and one other person executed another sale deed on 20.12.1995 in favour of the applicant and sold 31 teak trees, 01 Bija tree, 02 Tinsa trees and 05 Mundi trees for a consideration of Rs. 80,000/- market value of which was shown to be 2,04,000/-. Thereafter, the petitioner vide order dated 5.1.1996, after recording the statements of vendor Madka and Murki, accorded permission to sell 16 teak trees standing on his land and for that he was paid Rs. 4,05,355/- by the Forest Department as consideration of the same.

11. In the same way, in Revenue Case No. 111-A 63/1994-95 applicant Digpal Shah purchased 5.28 acres of land and 34 trees were also standing thereon from the tribal owners namely Chaitu, Mandu and one other tribal owner for a consideration of Rs. 1,00,000/-. the market value of the said land was mentioned in the sale deed as 1,51,000/- and that of trees was mentioned as 18,500/-. Thereafter, the applicant applied for permission to the petitioner to cut 21 teak trees and one Aden tree and sell the same to the forest department. The petitioner after obtaining report from the Subordinate Revenue Officers and the concerned DFO accorded permission on 12.7.1995 to cut 15 teak trees and sell the same to the Forest Department. Thereafter applicant Digpal Shah was paid a sum of Rs. 9, 39,168/- as value of the 15 teak trees as per the permission dated 12.7.1995.

12. In Revenue Case No. 109-A 63/1994-95 applicant Shishupal Shah purchased 4.20 acres of land along with 28 trees standing over the said land for a consideration of Rs. 1, 00,000/- from its tribal owner. The market value of the land was mentioned in the sale deed as 10,600/- and that of trees was mentioned as 1,32,000/- . Thereafter he applied for permission to cut the 19 teak trees, and 7 other trees and sell the same to the forest department. Subsequently, the petitioner granted permission to the applicant vide order dated 27.1.1996 to cut 13 teak trees. As per the permission granted by the petitioner on 27.1.1996 the trees were cut and the applicant was paid a sum of Rs. 4,83,457 on 26.9.1996 by the forest department as value of the 13 number of trees.

13. In Revenue Case No. 109-A 63/1994-95 applicant Shishupal Shah purchased 2.35 acres of land with 34 trees standing thereon from its tribal owners namely Budri widow of Hadma Muriya and Sukka for a consideration of Rs. 1,25,000. Market value of the land was mentioned in the sale deed as 4,700/- and that of the trees was mentioned as 1,91,500/- He thereafter applied to the petitioner for permission to cut the 34

trees standing on his land and sell the same to the Forest Department. The petitioner then after obtaining the report from the concerned DFO and the SDO (Revenue) Dantewada, accorded permission vide order dated 24.7.1995 to cut 15 teal trees and sell the same to the Forest Department. As per the permission granted by the petitioner the applicant was paid a sum of Rs. 8, 48,547/- as value of the 15 teak trees.

15. In Revenue Case No. 154-A 63/1994-95 applicant Kamlesh Kumar purchased 0.68 acres of land from tribal owners for a consideration of Rs. 50,000/- through registered sale deed dated 2.3.1995. The applicant applied for permission to the petitioner to cut 12 teak trees standing on his land. The petitioner sent the case for inquiry to the SDO (Revenue) concerned. Naib Tehsildar submitted the report through the SDO (Revenue) to the petitioner and the petitioner on the basis of the said report granted permission to the applicant vide order dated 12.7.1995 to cut 12 teak trees. In pursuance of the said order of the petitioner the applicant was paid a sum of Rs. 4, 08,851/- by the Forest Department as value thereof.

16. In Revenue Case No. 112-A 63/1989-90 applicant Merpelli Shankar alias Samaiya purchased 1.57 acres of land from its tribal owner vide registered sale deed dated 24.7.89. Thereafter, he applied for permission to the then Additional Collector to cut the trees standing on his land and sell the same to the Forest Department. In the application he mentioned that the land is situated near a River. Tehsildar of the area recommended the matter for permission on 4.1.1995. In the report apart from other things, it is stated that there is no tank or river near the land and as such there is no apprehension of land erosion. However, the concerned SDO (Revenue) did not recommend the matter for permission on the ground that in the sale deed there is no mention to the effect that the tribal owner has sold the trees as well situated on the land. The then Additional Collector called for the report from the subordinate Revenue Officers. The concerned SDO (Revenue) submitted his reports dated 28.2.1992 and 30.9.1992 and on the basis of the said reports,

the then Additional Collector, Dantewada vide order dated 24.11.1992 rejected the application of the applicant. The applicant preferred an appeal before the Commissioner who allowed the appeal vide order dated 19.12.1994 and remanded the case to the Additional Collector to verify whether the value of the trees standing on the said land was paid to its tribal owners and thereafter decide the same on merits. The petitioner after recording the statement of Kursam Buchaiya and Lakshamiya and Kursam Chandraiya, allowed the application of the applicant for permission to cut the 19 teak trees and sell the same to the Forest Department vide order dated 2.1.1996.

17. In Revenue Case No. 3/A-63/89-90, applicant Digambar Soni purchased 0.08 acres of land from its tribal owner namely Mohanlal Kurmi for a consideration of Rs. 9,000/-. On 19.2.1987 he applied for permission to the then Additional Collector under section 241 of the Code of 1959 to cut the 3 teak trees standing on his land. The then Additional Collector called for the report of the concerned SDO (Revenue) and after obtaining the report granted permission to cut 4 teak trees and 01 Bija tree to the applicant.

18. The legal submission made by the learned counsel for the petitioner is that the petitioner has passed the above orders while discharging the duties of a Revenue Officer under the Code of 1959 and as such the status of Court has been conferred as per section 31 of the Code of 1959. He further submits that the act of the petitioner is protected under Section 3 of the Judges (Protection) Act 1985 and therefore no disciplinary proceedings could be initiated against the petitioner for the above said act done by him. Sub section 1 of Section 3 of the Act of 1985 enumerates the additional protection available to the Judges and no Court can contemplate or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. However, sub

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section 2 of section 3 of the Act of 1985 makes it very clear that the Central Government or the State Government are not debarred from taking action by way of civil, criminal or departmental proceedings against such person who is or was a Judge.

19. Learned counsel for the petitioner relying upon the judgment of the Supreme Court in the matter of **Junjarrao Bhikaji Nagarkar Vs. Union of India and others reported in (1999) 7 SCC 409** submits that the departmental enquiry can not be initiated on the basis of vague and indefinite information and on the basis of suspicion unless there is allegation that the officer has done his official duty with improper motive or for extraneous considerations and the charge sheet against him is not maintainable. It is argued that to maintain the charge sheet against against a Quasi Judicial Authority, some extraneous consideration influencing quasi judicial order, deliberate act or mala fide has to be alleged and negligence in order to constitute misconduct should not be mere carelessness, inadvertence or omission but culpable negligence. It is submitted that the quasi judicial authority needs protection from falling into disrepute. He submitted that the entire system of administrative adjudication will fall into disrepute if the officers performing quasi judicial functions are inhibited from doing so without fear or favour in case they are subjected to constant threat of disciplinary proceedings.

20. The Apex Court in the matter of **Union of India Vs. K.K. Dhawan reported in (1993) 2 SCC 56** discussing its earlier decisions in the matter of S.Govinda Menon Vs. Union of India reported in AIR 1967 SC 1274 and in the matter of Union of India Vs. A.N.Saxena reported in (1992) 3 SCC 124, has held that the disciplinary proceedings can not be initiated against an officer on vague and indefinite information and every error of law does not constitute a charge of misconduct as the same will impinge upon independent functioning of quasi judicial officers like the petitioner. To maintain a charge sheet against a quasi judicial authority, something more such as extraneous consideration

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influencing quasi judicial order has to be alleged. The relevant portion of the of the judgment is reproduced as under:

28. *"Certainly, therefore, the officer who exercises judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:*

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) If he has acted in a manner which is unbecoming of a Government Servant;

(iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) If he had acted in order to unduly favour a party;

(vi) If he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small yet the fault is great."

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29. *"The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action is not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute can be postulated."*

21. Learned counsel for the petitioner relying on the judgment of the Supreme Court in the matter of **Kashinath Roy Vs. State of Bihar reported in (1996) 4 SCC 539,** submits that the petitioner has passed the orders in the aforesaid revenue cases as per the provisions contained the Act of 1956 which are appellable under the said Act as also under the Code of 1959. However, according to the counsel for the petitioner the State has not preferred any appeal against the said orders passed by the petitioner in the aforesaid revenue cases. He further submits that if there was an intolerable error detected by the State in the orders passed by the petitioner, the same could be corrected by the appellate authorities and on the basis of such error the Departmental Enquiry can not be initiated.

21. Learned counsel for the applicant further relying upon the decision of the Apex Court in the matter of **Union of India Vs. J. Ahmed reported in (1979) 2 SCC 286** submits that there is no allegation against the petitioner in the charge sheet that the orders have been passed for any extraneous consideration or with any ulterior motive and in the absence of such allegation the charge leveled against the petitioner does not constitute misconduct in the context of Rule 3 of All India Service (Conduct) Rules 1954. According to the learned counsel for the petitioner the charge against the petitioner is that in the discharge of his duties as public servant while posted as Additional Collector, Dantewada, he in collusion with some private persons passed orders in the above mentioned revenue cases as described in charge No.1 and thereby permitted the applicants of those cases to cut the trees exceeding the value of Rs. 5000/- as described in section 3 of the Act of 1956. Secondly, he passed orders in revenue cases

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described in charge No.2 and thereby accorded permission to cut trees ignoring the provisions of sections 240 and 241 of the Code of 1959 and rules framed there under.

Section 3 (1) and 3 (3) of the Act of 1956 are quoted below for ready reference:

> *"3.1- No contract entered into after the commencement of this Act by a tenure-holder belonging to Aboriginal Tribe for the specified trees in his holding shall be valid in so far as it relates to specified trees without the previous permission in writing of the Collector.*
>
> *3.1A- A tenure holder belonging to Aboriginal Tribe intending to seek permission under sub section (1) shall make an application to the collector in such form as may be prescribed.*
>
> *3.3- Where permission is granted under sub-section (2) the cutting, transportation and sale of specified trees shall be done by such officer of the Forest Department of the Government and in such manner as may be prescribed."*

23. As detailed in the foregoing paragraphs, the circumstances in which the orders have been passed by the petitioner in the revenue cases mentioned in charge No.1 indicate that while passing the orders the petitioner did not consider the provisions of section 3 of the Act of 1956 as in all the cases the land on which the trees were standing initially belonged to the other tribal owners and the same were purchased by the applicants of the aforesaid revenue cases immediately before preferring an application for sanction to cut the said trees. There is no inquiry regarding adequacy of the consideration paid to the original owners by the applicants. In some cases interest in the trees was transferred by the original owners to the applicants during the pendency of the revenue cases but even then no inquiry was conducted regarding the value paid to the original owners before passing the orders giving permission to cut the trees.

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23. Thus at this stage it can not be said that the petitioner had passed the orders in the revenue cases mentioned above bonafidely as per the best of his judgment while exercising quasi judicial powers. The fact that numerous orders have been passed ignoring the provisions of section 3 of the Act warrants departmental inquiry. There is ample material available on record along with the charge sheet which clearly demonstrates that in all the aforesaid revenue cases referred to in charge No.2 the orders have been passed ignoring the prohibition contained in section 240 of the Code of 1959 and rules made there under. As to whether the said orders have been passed by the petitioner for extraneous consideration or ulterior motive or recklessly or negligently or bona fide can be decided in the departmental inquiry and not in this writ petition.

24. Thus in view of the foregoing analytical discussion we are of the view that this petition has no force and the same is liable to be dismissed. Accordingly, it is dismissed. However, it is made clear that it shall be open to the petitioner to take all his defence in the departmental enquiry which shall be considered on its own merits without being influenced by the observations made in this order.

Sd/-
Chief Justice

Sd/-
Dhirendra Mishra
Judge